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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,515	07/01/2003	Donald E. Weder	8403.922	2172

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EXAMINER
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PALO, FRANCIS T

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 01/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/611,515

Applicant(s)

WEDER, DONALD E.

Examiner

Francis T. Palo

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/1/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Specification***

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

The disclosure is objected to because of the following informalities:

Appropriate correction is required.

Paragraph [0001] should be updated to reflect the patent status of Application 10/213,731.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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**Claims 1-30** are rejected under 35 U.S.C. 102(b)  
as being anticipated by Stehouwer (US 5,076,011) 1991.

Regarding independent **claims 1 and 21**:

Stehouwer teaches a decorative pot cover having a base (12) capable of being flattened and unflattened (Figure-1) and a plurality of 'gathered' portions (column-2, lines 60-63) whereby, the outer peripheral surface of the base is provided with a plurality of panels [(column-1, lines 61-64), (Figures 1 and 2)], the gathered portions readable on fins or flaps as cited in the instant claim.

Stehouwer further depicts in Figure-1 structure at the upper end of the cover readable on a skirt as cited in the instant claim.

The decorative cover of Stehouwer is formed from a sheet of material as cited (column-2, lines 1-2) having forming indicia readable on "a lack of pattern that is present on other portions of the sheet material" as cited; that is; the cut away portions of the sheet.

Stehouwer teaches heat-sealing butt welds and the use of adhesive joining (column-3, lines 60-64).

Regarding **independent claim-6**:

The discussion above regarding claim-1 is relied upon.

Crimped portions disposed along the inner and outer peripheral surface of the Stehouwer cover are evident from Figure-1, and as discussed above, Stehouwer teaches adhesive joining.

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Regarding **independent method claims 11, 16 and 26**:

The discussions above regarding claims 1 and 6 are relied upon.

The methods of forming as cited, is taught by Stehouwer and encompassed by the discussion regarding the independent claims above.

Regarding repeating **claims 2, 6, 12, 17, 22 and 27**:

The discussions above regarding the independent claims are relied upon.

Stehouwer teaches manufacturing the pot cover from a rectilinear sheet stock (column-2, lines 1-2).

Regarding repeating **claims 3, 8, 13, 18, 23 and 28**:

The discussions above regarding the independent claims are relied upon.

Stehouwer teaches 0.003 in thick polyethylene, which is encompassed by the range cited in the instant claims.

Regarding repeating **claims 4, 9, 14, 19, 24 and 29**:

The discussions above regarding the independent claims are relied upon.

An undulating outer edge skirt design is evident from Figure-1 of Stehouwer, as cited.

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Regarding repeating **claims 5, 10, 15, 20, 25 and 30**:

The discussions above regarding the independent claims are relied upon.

The base (12) of Stehouwer is readable as being substantially shape-sustaining as cited.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

**Claims 1-30** are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 6,615,541.

Although the conflicting claims are not identical, they are not patentably distinct from each other because they encompass the instant claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hirano, Weder '663, Garcia, Weder '610, Adams, Wood and Karotseris all teach related covers of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 703-305-5595. The examiner can normally be reached on M-Tu.,Th.-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703-305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink that reads "Francis T. Palo". The signature is written in a cursive, flowing style.

Francis T. Palo  
Examiner  
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